

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
February 10, 2010**

In attendance: Commission Members Lisa Middleton, Donald Marshall, John Riggs, and Jiles Smith.

Others present: Rick Plein, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Vanessa Himelblau, Senior Staff Counsel, Legal Division opened by announcing that the first order of business is the election of a new Chair of the Fraud Assessment Commission (FAC). Ms. Himelblau gave a detailed explanation on the election process.

The question was raised as to whether or not the FAC could elect a Vice-Chair position. Ms. Himelblau stated that the Commission would need to enact bylaws before electing any other executive position to the Commission besides the Chair. In order to enact bylaws, the FAC would need to have this as an agenda item for a future meeting, have a public discussion about the bylaws, and then the FAC would vote to enact certain bylaws.

Vanessa Himelblau noted that in the event of a tie vote for the Chair, further discussions about the Chairmanship and the candidates would be required, then public comments, and take another vote. This process will continue until the Commission has elected a new Chair. If a member abstains from voting, that vote counts toward the majority of the votes.

Ms. Himelblau introduced the two new members of the FAC, Don Marshall and John Riggs. After the new members introduced themselves, Ms. Himelblau asked each of the members if he or she intended to run for the Chair position. Commission members Lisa Middleton and Jiles Smith stated they both planned to run for the position. Both candidates were given five minutes to present their candidacy.

Ms. Middleton congratulated Mr. Smith for stepping forward to run for the position. "I think he would make an outstanding individual for the Chair's position." She stated even though efforts and expenditures have increased by all parties in the past decade, workers' compensation fraud is still increasing in prevalence and economic impact. What we are doing is not sufficient to the crimes that are being committed out there, and we need to find better ways to

combat workers' compensation fraud. Ms. Middleton suggested several things that are needed for the FAC in order to better support the program and educate the public, such as more regularly scheduled meetings, bylaws, and a budget. The program also needs reliable funding in order to more effectively reduce workers' compensation fraud.

"I think that chairing this Commission is a major responsibility. I and the State Fund know the kind of commitment that's being made here today, and we're ready to do it," stated Ms. Middleton.

Commission member Jiles Smith began his remarks by saying he believed Ms. Middleton would be an outstanding Chair if he does not get elected to the position. He stated that he's been in the industry for over 20 years in different capacities, so he understands how the system should work.

Mr. Smith suggested several things that are needed for the FAC in order to better support the program such as increasing communication through additional forums, roundtables and advisory groups; fully funding the district attorneys (DAs) and the California Department of Insurance (CDI); make funding for DAs based on results; and focusing on outreach programs. Mr. Smith noted that the program should be focused more on uninsured employers and premium fraud. "That would give us more bang for our buck and actually help educate the public," stated Commission member Smith.

Public Comments were made by Latrice Holley, who raised the question of how to train district attorneys and the CDI to distinguish between workers' compensation and disability fraud. Another public comment was made by Sam Gold, who asked the candidates how they would ensure district attorneys aren't wrongfully accusing injured workers of committing crimes they haven't committed. Discussions ensued and Commission members Middleton and Smith responded to each of the questions.

Motion

A motion was made by Ms. Himelblau to take a vote for the new Chair of the Fraud Assessment Commission. Ms. Himelblau called the roll based on the order of seating at the commission member table.

Commissioner Marshall voted for Ms. Middleton
Commissioner Middleton voted for Ms. Middleton
Commissioner Riggs voted for Ms. Middleton
Commissioner Smith voted for Ms. Middleton

Action

Lisa Middleton was unanimously elected Chair of the Fraud Assessment Commission.

Public Comment

A presentation was made by Scott Carbaugh, Head Deputy District Attorney with the Los Angeles County District Attorney's (LADA) Office, to recognize Larry McGrail, from the LADA's Office, for his hard work and dedication to the Workers' Compensation Insurance Fraud Program. Mr. McGrail is retiring next month after more than 30 years with the LADA's Office. The newly elected Chair, Ms. Middleton congratulated Mr. McGrail on his retirement and presented him with a certificate of appreciation on behalf of the Department of Insurance and the Fraud Assessment Commission.

Chair Lisa Middleton called for a motion on minutes submitted from the September 9, 2009 meeting.

Motion

Commission member John Riggs made the motion to accept the minutes as submitted. Commission member Don Marshall seconded the motion.

Action

The minutes were unanimously passed.

Fraud Division Report

Deputy Commissioner Rick Plein reported that the Requests-for-Application were sent out to the district attorneys for all grant programs. The Department will be holding a DA informational meeting on March 17, 2010. The Workers' Compensation Grant Review Panel has been scheduled for June 2, 2010. Based on regulations, two FAC members sit on the panel.

Deputy Commissioner Plein reported that the Fraud Division's focus is on a balanced caseload and to make sure we are working all types of workers' compensation insurance fraud cases. The Department works jointly with other state agencies and in conjunction with the district attorneys.

Chair Lisa Middleton asked the Commission if they had any proposed agenda items for the next meeting on June 16, 2010. Commissioner Smith proposed to invite Judge O'Brien, a retired workers' compensation judge, to discuss a program that he has been working on with Commissioner Riggs. The project is to design and implement a statement that would be sent to injured workers every month so they are aware of the services the provider has billed to the insurance company.

Chair Lisa Middleton proposed to have the individuals from UCLA, who conducted a research study which discussed the extent to which many industries are not following the employment laws, speak at the next meeting to discuss their findings and recommendations. Chairperson Middleton also recommended having the bylaws, the development of a budget, and the establishment of a sub-committee to work on the bylaws as agenda items for the meeting in June.

Commission member Don Marshall spoke about the upcoming training co-sponsored by the California District Attorneys Association (CDAA), California Department of Insurance, California Fraud Investigators, and the National Insurance Crime Bureau. The training will begin on March 31, 2010 and will take place at the Monterey Hyatt.

District Attorneys

Mr. Michael Fermin, Supervising Deputy District Attorney from San Bernardino County, spoke on behalf of Gary Fagan, co-chair of the CDAA Insurance Fraud Sub-committee. He reaffirmed their commitment to the program and to working with the FAC. He discussed the CDAA Insurance Fraud Seminar which was held in November 2009. "What we tried to do this year is different from prior years, is focus on the nuts and bolts of prosecution," said Mr. Fermin. CDAA has tried to become green by making the handouts available electronically rather than providing hard copies.

The Legislature has made some attempts to reduce prison overcrowding by diminishing penalties for certain crimes, such as insurance fraud. In some instances, crimes that were felonies last year are now considered misdemeanors. Reducing these crimes to misdemeanors would curb their ability to do search warrants on these cases. One proposal is to reduce the statute of limitations which will greatly reduce their ability to effectively investigate workers' compensation insurance fraud cases.

Chair Middleton thanked Mr. Fermin and everyone involved with CDAA for the conference in November. "It was quite a privilege to be there for the four days and to witness the quality of training and the passion and commitment that exists throughout California among the district attorneys," said Chair Lisa Middleton.

The meeting adjourned at 11:21 a.m.